In The Circuit Court
Of the Eleventh Judicial Circuit
In And For Dade County, Florida
General Jurisdiction Division

NORMA R. BROIN, etc., et al.,

Plaintiffs,

vs.

PHILIP MORRIS COMPANIES, INC., etc., et al.,

Defendants.

Case No. 91-49738 CA22

COPY

TRIAL
Volume 48

TRANSCRIPT OF PROCEEDINGS

in the above-styled cause before the Honorable Robert Paul Kaye, at the Dade County Courthouse, 73 West Flagler Street, Miami, Florida, on Wednesday, July 16, 1997, at 1:05 p.m.

Appearances:

Stanley M. Rosenblatt, P.A.
By Stanley M. Rosenblatt and Susan Rosenblatt, Esqs.
On behalf of the Plaintiffs

Jones, Day, Reavis & Pogue
By Hugh R. Whiting, Esq.
On behalf of R.J. Reynolds

Anderson, Moss, Sherouse & Petros
By Edward A. Moss, Esq.
On behalf of Brown & Williamson

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Williamson. I started questioning him.

His deposition was taken in Louisville, Kentucky, July 13, 1994, and all the parties were represented by counsel. Okay. Beginning on page 4, line 7:

(Thereupon, deposition testimony was read into the record was follows:)

Thereupon:

THOMAS E. SANDEFUR, JR.

Q. Sir, please state your name and your address.

A. Thomas Edwin Sandefur, Junior, [DELETED]

Q. By whom are you employed?

A. Brown & Williamson Tobacco Company.

Q. And what is your position with Brown & Williamson?

A. I'm chairman and chief executive officer.

Q. And how long have you been chairman and chief executive officer?

A. Since April of 1993.

MR. ROSENBLATT: Page 5, line 7:

Q. What did you do after graduation in terms of employment or service or whatever?

A. I went to work for Reynolds Tobacco Company.

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MR. ROSENBLATT: Page 26, line 11:

Q. How long were you based in Winston-Salem altogether when you worked for Reynolds?

A. About 16 years, I think.

Q. How long were you vice president of brand management?

A. Until 1980.

Q. Okay.

A. Late '79, early '80.

Q. What happened at that point in time?

A. I was moved over to the international division of Reynolds Tobacco Company or Reynolds Industries as vice president of marketing for the international division.

Q. Did you remain in Winston-Salem in that new position?

A. For awhile. Then I moved to Geneva, Switzerland.

Q. What year did you move to Switzerland?

A. It was 1981.

Q. Why Geneva?

A. That was where the European headquarters was for Reynolds of Europe.

Q. Was there any manufacturing going on in Geneva?

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A. No, sir.

Q. And how long were you based in Geneva?

A. I left Reynolds in mid 1982, so I was in Geneva from early '81 to mid 1982.

MR. ROSENBLATT: Going to page 28, line 23:

Q. And then you left Reynolds in 1982?

A. Yes.

Q. In approximately when?

A. I believe I joined Brown & Williamson on like July 19th, '82, somewhere like that, mid year '82.

Q. Why did you leave Reynolds?

A. Because I wanted to come back to the United States.

Q. Okay.

A. The opportunity was -- in my view was significantly greater at Brown & Williamson than R.J. Reynolds.

MR. ROSENBLATT: Page 49, line 20:

MR. RUSS: No, I think that was out.

THE COURT: Let me see.

MS. ROSENBLATT: Now the part we had just been on, 29, was that crossed out? Because it's not here.

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Was page 29 crossed out?

MS. ROSENBLATT: Stan says it was. I crossed it out. I was confused.

THE COURT: That's not a crossout on the rest of it.

MS. ROSENBLATT: That is, apparently.

THE COURT: I know that is, but the rest of it.

MS. ROSENBLATT: The other part we had right now, and this was also.

THE COURT: Whatever copy you have did not have the corrections on it.

MR. RUSS: I've got it right here.

MR. HARDY: His copy does, her copy doesn't.

THE COURT: But she doesn't know what to --

MS. ROSENBLATT: I will just follow by the question.

MR. ROSENBLATT: Apparently there is an issue 49, line 20.

MR. RUSS: You say it's out. Line 20 through 23.

THE COURT: The reason we are having this problem, folks, while you were in there, we

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were going in and taking out certain documents. Not everybody marked the copy at the same place, so we have a problem.

MR. ROSENBLATT: I think we now go to 51, line 10.

MR. RUSS: That's right.

Q. Do you concede that there are some smokers who sincerely wish they could stop smoking who are unable to stop smoking?

A. There may be.

Q. And if there are, are they addicted to nicotine or something else in the tobacco?

A. I don't think nicotine is addictive, so I don't -- if they cannot quit, it's either they haven't made up their mind to quit in my opinion.

MR. ROSENBLATT: Page 65, line 20?

MR. RUSS: Correct.

Q. What is the reason for that, going to the low tar brands?

A. Because the consumer shows a desire to have lower tar cigarettes, milder cigarettes.

Q. Does your research show or does your expertise in this field tell you that the main reason the low tar cigarettes became popular was because the consumer believed that they were less

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potentially harmful to their health than high tar cigarettes?

A. I think that over time the government educated the consumer to believe that, yes.

Q. Do you think that's true?

Do you think that the amount of tar in a cigarette has any relationship whatsoever to health factors?

A. I don't think so, no.

MR. ROSENBLATT: Page 84, line 22:

Q. Does cigarette smoking cause lung cancer and heart disease?

A. I think there is a health risk with smoking and disease, yes.

Q. I'm not asking you anything about any health risks. I'm deliberately using the word "cause."

A. No, I do not think -- in my opinion it has not been proven that it causes lung cancer, no. I think it is a risk factor. Smoking is a risk factor, yes, as is eating fatty foods and diet.

Q. Lack of exercise?

A. Any number of things.

Q. Cheesecake?

A. Yes.

Q. Bacon, lettuce and tomato; that is a risk

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factor?

A. Any fatty foods.

Q. McDonald's is a risk factor?

A. I would think so, yes.

MR. ROSENBLATT: Line --

MR. RUSS: Line 21.

Q. Do you agree that cigarette smoking has caused lung cancer and death in some Americans?

A. I don't know. I don't know.

Q. Maybe yes, maybe no?

A. Maybe yes, maybe no. It's a risk factor. I think it's in combination with other things.

Q. Have you read any Surgeon General's reports?

A. Yes, I have.

Q. Well, the Surgeon Generals of the United States have consistently said in the last 30 years that smoking does cause cancer, heart disease, and other diseases.

What is there about your information or their information that causes you, a nonscientist, to say they are wrong?

A. I don't think the studies are valid. Based on the input from people I respect in the scientific community, I've drawn the conclusion that while the Surgeon General may think that's the case, I do not

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share his belief.

Q. What is invalid about the studies?

A. They are not dealing with whole smoke. They are dealing with painting of mice and that kind of thing. I don't think that's valid in terms of human --

MR. ROSENBLATT: Wait.

MR. RUSS: I think she misread.

MR. ROSENBLATT: Where do you want me to start, or her?

MR. RUSS: Start with the question "What's invalid about the studies?"

MR. ROSENBLATT: Okay.

Q. What's invalid about the studies?

A. They are not dealing --

MS. ROSENBLATT: That's what it says here.

MR. RUSS: Go ahead.

A. -- with whole smoke. They are dealing with painting of mice and that kind of thing. I don't think that's valid in terms of human practices of smoking whole smoke.

MR. ROSENBLATT: Then we go to page 87, line 10:

Q. Does the name Ernst Wynder ring a bell to

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you?

A. No.

Q. It's unfamiliar to you?

A. Right.

Q. How about Dr. Ernst Wynder?

A. No.

Q. Still unfamiliar?

A. Yes.

Q. Are you familiar with an experiment that was done a number of years ago which is constantly referred to both in the scientific literature and in the popular media about painting tars on the back of mice, where tumors developed?

A. I'm generally familiar with it, yes.

Q. Well, I want you to assume that there are studies out there where tobacco tar has been rubbed on the back of mice, and those mice developed malignant tumors, and the opinion of the scientists conducting the studies is that the reason the malignant tumors developed was because of the tobacco tars.

Why would you disagree with that?

A. I am told by our scientists that you can create the same type tumors with concentrated tomato juice that were created with tobacco or tar from

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tobacco.

Q. Causing you to conclude what?

A. That the painting of mice skin is inconclusive. I'm also told that those type tumors have never been found in a human lung.

Q. Who's told you that?

A. Different scientists over the -- my career in the tobacco business.

Q. Name some of them.

A. Well, I guess Dr. Sam Jones would be one.

Q. Who is he employed by?

A. I don't know if Sam is alive. He used to be with Reynolds.

Lance Reynolds would be one, who is retired from Brown & Williamson.

Q. Can you name one scientist or one medical doctor totally unconnected with the tobacco industry, never employed by the tobacco industry, never received any money from the tobacco industry, who says that it has not been scientifically established that cigarette smoking causes cancer?

A. Not that I know of.

Q. Well, when you say the American public is informed on this subject, I take it you would agree that there are millions of Americans who agree with

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the views you've just expressed, that it's a risk factor but it's certainly not been scientifically proven that cigarette smoking causes cancer.

A. I think the majority of the American population believes it does cause cancer.

Q. And what do you base that on?

A. The Surgeon General's warning says it causes cancer, lung cancer.

Q. But don't you figure there are at least 45 million Americans who agree with you, the Americans that continue to smoke in spite of the Surgeon General's warning? They must agree with you that it's only a risk factor.

A. They may, they may. Some of them may. Some of them may not.

Q. You don't really have any figures on that?

A. No, I don't. I'm giving you my personal opinion.

Q. Or any research?

A. No, I don't.

Q. So as you sit here today, July 13, 1994, you are unable to mention any medical doctor or any scientist unconnected with the tobacco industry who has ever publicly stated that it has not been proven that cigarette smoking causes cancer?

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A. I can't give you any names. But by the same token, I haven't gone out and searched to find anybody. I don't know. There may be people out there.

MR. ROSENBLATT: So all that's out on 91. 95 is out.

MR. RUSS: Right. 103 to 107, out. 110. Go over to 117.

MR. ROSENBLATT: You are saying the next page we go to is 117?

MR. RUSS: Yeah.

MR. ROSENBLATT: Okay. Are you with me, Susan.

MS. ROSENBLATT: Yeah, I'm just looking. Okay.

MR. ROSENBLATT: Page 117, line 20:

Q. Did Brown & Williamson Tobacco Company conceal for any period of time that it knew its products to be both health hazards and addictive?

A. Not to my knowledge.

Q. And is that answer based exclusively on the information you've received from Mr. Real?

A. No, my answer is based on information that I received from Mr. Real and others, as well as my experience in this industry. I don't think that --

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well, I can say categorically that this is an honorable industry. We are not trying to hide anything. And if we had that information, we would have made it public.

Q. How many Americans have quit smoking in the last ten years?

A. I think the Surgeon General says -- in '88 I believe he said that it was some 40 million; that over half the people that have ever smoked have quit.

I would think if the Surgeon General says that, it's probably a low-ball figure, because he's certainly not out to help us.

Q. Do you accept the 40 million figure?

A. I think it's probably low.

Q. Let's take the 40 million figure. Why do you think 40 million Americans have quit smoking?

A. People choose to smoke and choose not to smoke and choose to quit. I think the fact of the matter is, over many, many years now the American public has been aware that there is a risk in terms of smoking and health, and I think people have decided to give up the pleasures of smoking, purely and simply.

That's a layman's opinion. I don't have any

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research to back that up. I'm giving you my opinion.

Q. You think that the great majority of the 40 million Americans who have quit smoking quit smoking because of health concerns?

A. Of being aware that there was a risk associated with smoking, yes.

Q. 40 million Americans at least, and that's probably on the low side according to you, have quit using your product, and you don't have any research on how to stop that trend or why?

A. Stop the trend? We are in the business of selling products to people who have chosen to use them. We don't encourage people to smoke.

Q. Surely you're not saying you're indifferent to the fact that millions upon millions of Americans have stopped smoking?

Obviously it would be infinitely more profitable to you and the other companies if these 40 million were still smoking.

A. Sure. But I'm dealing as any consumer packaged good marketer does. I'm dealing with the product that the consumer can choose or not use.

Proctor and Gamble markets Pringels Potato Chips as a small percentage of the potato chip

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market. There are some people who use it, some people who don't. Proctor can't do anything about the people who don't choose to use their potato chips, their so-called potato chips.

Would they like to have all the potato chip market? Certainly they would. But there's nothing they can do about it.

Q. Well, that analogy really doesn't hold, because the 40 million have stopped using any brand.

A. Right.

MR. ROSENBLATT: And then we go to page 124, line 11:

Q. When is the first time that any Brown & Williamson scientist or researcher concluded that smoking is hazardous to health and it is addictive?

A. I don't know that we've ever done that.

Q. In all the time you've been with Brown & Williamson, have you ever seen any in-house document of any kind, whether it be a written note, informal in the form of a memorandum, correspondence, anything, where any employee of Brown & Williamson concluded or said that there's evidence that smoking is hazardous to health and it is addictive?

A. Absolutely not.

MR. ROSENBLATT: Page 125, line 4:

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Q. What would it take to prove to you that cigarette smoking causes cancer and heart disease?

A. It would take people who I respect in the scientific area coming to me and saying that studies that have been repeated have demonstrated that whole, fresh smoke creates disease. They've yet to do that, and I've asked.

Q. Who have you asked?

A. I've asked the scientists.

MR. ROSENBLATT: I've asked "our" scientists.

MS. ROSENBLATT: Sorry.

A. I've asked our scientists.

MR. ROSENBLATT: And then we go from page 125 to page 134, line 17:

Q. Mr. Sandefur, isn't it true that there is really nothing that I could do or that any scientist could do which would convince you that cigarette smoking causes cancer in human beings?

A. No, that's not the case. It disturbs me greatly to hear people talk about tobacco products killing anyone. As I have testified, I have been in this business all my life, and I am genuinely interested in the products that I sell. I want my products to be safe. I don't want my products to be

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perceived as dangerous.

I would be open to any research. But I think that what we have to do is to make sure that the research is valid. I think many -- in many cases people jump to conclusions about products and call them unsafe, and then with the passing of time they find out that the research they are based on was wrong. That concerns me as well.

So, to answer your question, I would certainly be interested, very interested, in research on both sides of the issue.

Q. So we could have --

A. I'm not a scientist. I wouldn't be able to interpret the research. But that's what I pay my scientists for.

Q. Well, give me an example of an experiment that would satisfy you, that, hey, I'm convinced that cigarette smoking causes cancer.

A. See, I can't do that. I'm not a scientist. As I said previously, I would rely on my scientists to give me recommendations and to advise me.

Q. Well, what instructions have you given your scientists in terms of carrying out experiments on that issue?

A. They are responsible for reviewing any and

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all research done anywhere in this wide world in the area of smoking and health.

See, I think that our company is better served by doing it that way, because my company, purely and simply, wouldn't be in a position to set up its own lab to do all the research that needs to be done in this area. We rely on independent third parties to do it.

People like you would come in and say, well, the tobacco industry did the research, we can't believe that. That's why my company has chosen to pursue the route that we've pursued, to rely on studies done by independent parties and to review those studies.

Q. And not a single one of those studies has sufficiently impressed you or any of your scientists to cause them to conclude that cigarette smoking causes cancer and other diseases?

A. That's correct. That's correct.

They very firmly believe that there is a health risk based on the statistics associated with smoking and health. We say that.

If somebody came to me and asked me, "should I smoke?" I would make them aware that there is a health risk to smoking, because they need to make a

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choice.

MR. ROSENBLATT: And we go to page 138, line 15:

Q. If I walked down the main street in Louisville or Miami or New York and just took 100 people at random and said, "Do you think smoking is addictive?" what do you think the majority would say?

A. I think you would probably get a good percentage that would say "Yes, I believe that smoking is addictive."

I don't know if it would be the majority.

As I testified in Congress, and I firmly believe this, I think people misuse the word "addiction." I think if you ask them, "Do you believe cigarette smoking is comparable to using cocaine or heroin?" I would venture to say the majority of people would say, "No, I do not."

But if you ask them, "Is cigarette or are cigarettes addictive?" they probably, off the top of their head, would say, "Yes, they're addictive."

I don't believe that that's the term that we ought to be using. I think cigarettes are habit forming, but I don't think they are addictive in the context of when I speak of addiction, I'm speaking

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in terms of heroin and cocaine and drugs that you have tremendous withdrawal from and you have to get medical help to get off of.

I don't think nicotine is any more addictive than drinking coffee, caffeine in coffee or tea. No, I don't think it's addictive.

I think it's according to the question you ask. If you ask people just off the street, "Do you think cigarettes are addictive?" I'm sure you'll find people in my company so say, "Yes, I think cigarettes are addictive."

But if you ask them, "What's the difference between addiction and habit forming; and rank cocaine, heroin, cigarette smoking, drinking coffee, and tell me the things in that ranking that are addictive," I don't think they would put cigarettes along with heroin and cocaine.

I think they would put cigarettes with coffee; that it's habit forming. That's the answer to your question.

MR. ROSENBLATT: Page 145, line 10:

Q. Other than the fact that you and the other tobacco executives say that smoking is somehow pleasurable, is there any other claim you would make for smoking?

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A. No, I think the attractiveness of using tobacco products, whether it be smoking tobacco or pipe tobacco, is the enjoyment derived and the pleasure derived from the experience of smoking the tobacco; using the tobacco, purely and simply. I don't make any claims for it other than that.

Q. You've never claimed that it's healthy for people?

A. No. I don't claim that, no.

MR. ROSENBLATT: Page 146, line -- do I start at line?

MS. ROSENBLATT: 8.

MR. ROSENBLATT: Line 8:

Q. What is Mr. Real's first name?

A. Tilford.

Q. T-I-L-F-O-R-D?

A. Yes.

Q. Real, R-E-A-L?

A. Yes.

Q. He still occupies the same position?

A: Yes, he works here in Louisville. He's fixing to be transferred to Macon.

Q. He's the number one science guy for Brown & Williamson?

A. He runs the research and development.

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MR. RUSS: "R & D," I think he said.

THE COURT: Say that again.

MS. ROSENBLATT: R & D, the abbreviation, research and development.

MR. ROSENBLATT: Okay. Getting to the end. Page 184, is that next? Line 12:

Q. Does cigarette smoke contain any carcinogens?

A. Not that I know of, no.

Q. Have you read the EPA Report on that subject?

A. I've seen the EPA -- I haven't read the report. I've been briefed on the EPA Report. I think it's flawed, but that's my personal opinion.

MR. ROSENBLATT: 185, line 2:

Q. In what way do you think the EPA study is flawed?

A. Well, it bothers me that they changed the confidence level on the data. That bothers me. When they've been using a 95 percent confidence level, for some reason they've arbitrarily dropped it to 90.

I'm also concerned that the correlations that are trying to be drawn are very, very low. I'm concerned that the way they went about it was purely

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and simply interviewing people, saying, "Have you been exposed to it?" I don't know a great deal about it.

MR. ROSENBLATT: Page 187, line 2:

Q. Do you think that secondhand smoke is harmful to some people?

A. I do not, no, sir. Harmful in --

Q. I'm not asking you about eyes watering. I'm asking you --

A. Do I think it causes disease?

Q. Yes.

A. No, sir, I do not.

Q. You are convinced it doesn't?

A. I don't think there's a statistical correlation there.

Q. You don't even think it's a risk factor?

A. It has not been demonstrated to me yet. It may be, but it hasn't been demonstrated to me yet.

Q. And you're satisfied, for example, that even secondhand smoke in the presence of infants is not going to cause them any harm?

A. I don't think so.

MR. ROSENBLATT: Page 189, line 9:

Q. You would agree, would you not, Mr. Sandefur, that if someone believes what you

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believe in terms of the views you've expressed today, there's no reason not to continue smoking if you find it pleasurable?

A. That's correct. And I think people ought to have a choice. I don't think anybody ought to be told one way or the other, but they ought to have a choice.

THE COURT: Is that it?

MS. ROSENBLATT: No, I think there's very little more.

MR. ROSENBLATT: Page 219, line 25:

Q. Did you make the statement before Congress that without nicotine, cigarettes simply would not taste like cigarettes?

A. Yes, that's right. I think all you have to do is look at the product that Philip Morris put on the market a year or so ago called Next, which was a denicotized cigarette and it absolutely failed. Consumers and focus groups may tell you that, hey, that sounds like a good idea. I would like to have a no-nic cigarette. And then you produce it, and nobody buys it. The reason they don't buy it is because it doesn't taste like a cigarette.

MR. ROSENBLATT: Page 256, line 25:

Q. Did you know a lawyer named J. Kendrick

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Wells?

A. Yes.

Q. Where is he located now?

A. Here in Louisville.

Q. Is he in active practice?

A. He works for Brown & Williamson, yes, in our law department.

Q. Directly for Brown & Williamson?

A. Yes.

MR. ROSENBLATT: Page 265, line 21:

Q. What is the policy in the Brown & Williamson building on smoking?

A. You can smoke in Brown & Williamson's building.

Q. No restrictions?

A. Absolutely not.

Q. How does that accommodate the nonsmoker? We hear all this talk about freedom of choice. If I'm not a smoker and I'm bothered by the smoking --

A. I'm sure they would let us know, and we would accommodate them.

Q. How?

A. Creating a nonsmoking area.

Q. But you've never done that?

A. We never had a complaint. No.

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MR. ROSENBLATT: Going to page 267, line 2;

Q. Do you know what the Center for Indoor Air Research is or does?

A. No.

Q. Have you ever had any communication with them?

A. Not that I'm aware of.

Q. How about the word "nitrosamine," N-I-T-R-O-S-A-M-I-N-E? Doesn't mean anything to you?

A. No.

MR. ROSENBLATT: Page 271, line 11:

MR. HARDY: No, 21.

MS. ROSENBLATT: It's cut off.

Q. Who is the present Surgeon General of the United States, do you know?

A. "Ellers" or something like that. She's from Clinton's state.

Q. Elders?

A. Elders.

Q. She says the fact is, environmental tobacco smoke is deadly as well. Obviously you disagree with that?

A. Yes, sir.

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Q. You think environmental tobacco smoke, other than being an irritation to some people, is harmless; correct?

A. That is correct.

THE COURT: For the record, that last section was on page what?

MS. ROSENBLATT: 273, line 10 through 17.

THE COURT: So the record will reflect, we skipped page 272?

MS. ROSENBLATT: We skipped 272. We went from 271 to 273, correct.

MR. ROSENBLATT: Now we go to 274, line 12:

Q. Congressman Waxman said in your presence on April 14, 1994, "The truth is that cigarettes are the single most dangerous consumer product ever sold. Nearly half a million Americans die every year as a result of tobacco."

I know you disagree with that. Do you have a number as to the number of Americans who die each year as a result of tobacco?

A. No.

MR. ROSENBLATT: That's it.

THE COURT: Okay. All right. I

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